



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

TIDEWATER REGIONAL OFFICE

L. Preston Bryant, Jr.
Secretary of Natural Resources

5636 Southern Boulevard, Virginia Beach, Virginia 23462
(757) 518-2000 Fax (757) 518-2009
www.deq.virginia.gov

David K. Paylor
Director

Francis L. Daniel
Regional Director

STATE AIR POLLUTION CONTROL BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO NORFOLK REDEVELOPMENT AND HOUSING AUTHORITY FOR YOUNG TERRACE HOUSING CENTRAL HEAT PLANT Registration No. 60844

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code §§ 10.1-1309 and -1316, between the State Air Pollution Control Board and the Norfolk Redevelopment and Housing Authority, regarding the Young Housing Central Heat Plant, for the purpose of resolving certain violations of the Virginia Air Pollution Control Law and the applicable permit and regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Board" means the State Air Pollution Control Board, a permanent citizens' board of the Commonwealth of Virginia as described in Va. Code §§ 10.1-1184 and -1301.
2. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
3. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
4. "Facility" means the Norfolk Redevelopment and Housing Authority - Young Terrace Housing Central Heat Plant, located at 816 Whitaker Lane, Norfolk, Virginia operated by NRHA.

5. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 10.1-1309.
6. "NRHA" means the Norfolk Redevelopment and Housing Authority, a redevelopment and housing authority created pursuant to the Housing Authorities Law, Va. Code § 36-4 *et seq.* NRHA is a "person" within the meaning of Va. Code § 10.1-1300.
7. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the Virginia Air Pollution Control Law.
8. "Permit" means a State Operating Permit to operate three (3) natural gas/distillate oil-fired boilers and (2) natural gas-fired generators at the Facility, which was issued under the Virginia Air Pollution Control Law and the Regulations to NRHA on June 26, 2002.
9. "Regulations" or "Regulations for the Control and Abatement of Air Pollution" means 9 VAC 5 Chapters 10 through 80.
10. "TRO" means the Tidewater Regional Office of DEQ, located in Virginia Beach, Virginia.
11. "Va. Code" means the Code of Virginia (1950), as amended.
12. "VAC" means the Virginia Administrative Code.
13. "Virginia Air Pollution Control Law" means Chapter 13 (§ 10.1-1300 *et seq.*), of Title 10.1 of the Va. Code.

SECTION C: Findings of Fact and Conclusions of Law

1. NRHA owns and operates the Facility in Norfolk, Virginia which produces heat for the Young Terrace Housing facility.
2. NRHA was subject to the Permit which includes three (3) Kewanee 11.7 mmBTU/hr natural gas and distillate oil-fired boilers ("Kewanee boilers") and two (2) Thermo Electron 0.76 mmBTU/hr natural gas-fired electricity generators.
3. On January 13, 2010, DEQ compliance staff conducted a Full Compliance Evaluation at the Facility for compliance with the requirements of the Virginia Air Pollution Control Law, the Permit, and the Regulations. Based on the inspection and follow-up information, DEQ staff made the following observation:

DEQ staff observed that three (3) new Hurst 10.5 mmBTU/hr natural gas and distillate oil-fired boilers ("Hurst boilers") had been installed and

operated that were not listed in the Permit. The Kewanee boilers had been removed.

4. On February 17, 2010, DEQ issued a Request for Corrective Action to NRHA requesting NRHA to submit an air permit application for the three (3) new Hurst boilers.
5. On March 16, 2010 NRHA submitted an air permit application to DEQ for the three (3) new Hurst boilers. A review of NRHA's air permit application by DEQ staff indicated that the three (3) new Hurst boilers were subject to the Regulations and required an air permit.
6. On June 2, 2010, DEQ amended the Permit to include the three (3) new Hurst boilers and remove the Kewanee boilers and the generators (the generators had not been replaced at the Facility).
7. 9 VAC 5-80-1120(A) states that, "No owner or other person shall begin actual construction, reconstruction or modification of any stationary source without first obtaining from the board a permit to construct and operate or to modify and operate the source."
8. 9 VAC 5-80-1210 (D) states that, "Any owner who constructs or operates a new or modified source not in accordance with the terms and conditions of any permit to construct or operate, or any owner of a new or modified source subject to this article who commences construction or operation without receiving a permit hereunder, shall be subject to appropriate enforcement action including, but not limited to, any specified in this section."
9. 9 VAC 5-50-50 (A) requires that, any owner of a new or modified source subject to the provisions of this chapter shall provide written notifications to the board for the date of commencement of construction, initial startup, and actual date of startup for a new or modified source.
10. On June 9, 2010, based on the January 13, 2010 inspection and permit amendment issued June 2, 2010, the DEQ issued a NOV to NRHA for the violations described in paragraphs C(3) through C(9), above.
11. Based on the results of the January 13, 2010 inspection and modification of the Permit on June 2, 2010, the Board concludes that NRHA has violated 9 VAC 5-80-1120(A), 9 VAC 5-80-1210(D) and 9 VAC 5-50-50(A) of the Regulations as described in paragraph C(3) through C(9) above.
12. DEQ modified NRHA's Permit on June 2, 2010 and therefore the violations described in paragraphs C(3) through C(9), above, have been corrected.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it pursuant to Va. Code §§ 10.1-1309 and 1316, the Board orders NRHA and NRHA agrees to pay a civil charge of \$4,778.00 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

NRHA shall include its Federal Employer Identification Number (FEIN) [] with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF).

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of NRHA good cause shown by NRHA, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For the purposes of this Order and subsequent actions with respect to this Order, NRHA admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. NRHA consents to venue in the Circuit Court of the City of Norfolk for any civil action taken to enforce the terms of this Order.
5. NRHA declares it has received fair and due process under the Administrative Process Act, Va. Code and the Virginia Air Pollution Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.

6. Failure by NRHA to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority. NRHA does not waive any rights or objections it may have in any enforcement action by other federal, state, or local authorities arising out of the same or similar facts to those recited in this Order.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. NRHA shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. NRHA shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. NRHA shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director within 24 hours and in writing within three business days, of learning of any condition above, which NRHA intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim of inability to comply with a requirement of this Order.
9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and NRHA. Nevertheless, NRHA agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:

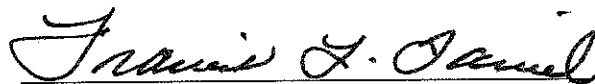
(a) NRHA petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or

(b) the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to NRHA.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve NRHA from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by NRHA and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
13. The undersigned representative of NRHA certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind NRHA to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of NRHA.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, NRHA voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 7th day of October, 2010.



Francis L. Daniel, Regional Director
Department of Environmental Quality

The Norfolk Redevelopment and Housing Authority voluntarily agrees to the issuance of this Order.

Date: 10/4/10 By: [Signature] Executive Director
(Person) (Title)
of the Norfolk Redevelopment and Housing Authority.

Commonwealth of Virginia

City/County of NORFOLK

The foregoing document was signed and acknowledged before me this 4th day of
October, 2010, by Shuel R. Montgomery, who is

Chief Executive Officer (CEO) of the Norfolk Redevelopment and Housing
Authority on behalf of the Norfolk Redevelopment and Housing Authority.

[Signature]
Notary Public

191938
Registration No.

My commission expires: 1/31/2013
Notary Seal:

